

New Hampshire Supreme Court

October 25, 2007

ORAL ARGUMENT CASE SUMMARIES

CASE # 2

State of New Hampshire v. Michael Spinale No. 2006-0872

Assistant Attorney General Susan P. McGinnis for the appellant, State of New Hampshire

Attorney Henry F. Spaloss for the appellee, Michael Spinale

QUESTION PRESENTED ON APPEAL:

Was the evidence presented to support the victim's identification of the defendant insufficient to support the jury's guilty verdict?

Did the trial judge make a mistake when she set aside the jury's verdict and ordered a new trial because the judge believed that based on the evidence at trial no "rational" jury could have found the defendant guilty of robbery beyond a reasonable doubt?

In this case, is the defendant protected by the "double jeopardy" clause of the state and federal constitutions which says that the government only has one opportunity to make their case?

QUESTIONS FOR STUDENTS TO CONSIDER:

What is the role of the jury?

What is the role of the judge?

Do you think the identifying evidence was insufficient?

Should the jury verdict always be upheld even if a judge has doubts about the evidence or the credibility of the witnesses?

Are there some cases when a judge should be allowed to throw out a conviction and not allow the government to bring the case again?

Why is the principle of double jeopardy important?

FACTS OF THE CASE

In July of 2004, Kevin James was working as a parking lot attendant outside the Happy Hampton Arcade, collecting fees and handing out tickets as vehicles entered the lot. He kept money in his apron and a "bankroll" of bills in his hand to make change. The weather

was good and James was very busy as cars filled up the lot, in anticipation of a fireworks display.

The defendant drove up in a Chevy Blazer with two men and started giving James a hard time about the price to park and where they needed to park. James reported the incident to his supervisor, who was inside the arcade. James said the men might be intoxicated; and he pointed the men out to his supervisor as they walked to the nearby beach.

After the fireworks, James saw the men who had given him a hard time approach him. One man went to the Chevy Blazer; the other man stood about 5-6 feet from James. According to James, the defendant walked up to him, pulled out a knife with a silver blade and a black handle, and pressed it up to James's neck. James said the knife looked like something he had seen in shops on the beach. James testified that the defendant said "give me all your *****money." James thought the man might be drunk or fooling. According to the prosecution, the defendant then looked into James's eyes and said, "No, seriously."

Just then, James saw the headlights of a car approaching from behind the defendant and the other man. "Look, there's the cops," James said and when the men turned around to look, James ran behind his ticket booth and hid. The men got in the Chevy Blazer and fled, but James pulled a ticket stub out and wrote down the vehicle license plate.

That night, James told police:

- Suspect #1 (**the man who held the knife to his throat**), the defendant, was 5'5-5'6 tall about 180-210 lbs and wearing a black shirt and had no facial hair. He said he was the man driving the Blazer.
- Suspect #2 (**man who stood 5-6 feet away**) ---5'8" 5'9" white shirt stocky build
- Suspect #3 (**walked to Chevy Blazer to wait**) ---5' 8-5'9 , wearing an Allen Iverson basketball jersey.

James' supervisor, who did not witness the robbery but saw the men walking to the beach, told police:

- Suspect #2 had a goatee and a white shirt;
- Suspect #3 was wearing a blue Allen Iverson Jersey.

A month later, in August 2004, James was shown two police photo arrays. The first included a photo of Suspect #2, but James made no identification. The second array included a recent photo of the defendant, Michael Spinale. James quickly picked out the defendant's picture and said "This is the kid who robbed me." In the photo array, the defendant, Michael Spinale, had facial hair.

At trial, James testified that he was “100 percent certain” that the defendant, whom he identified in the photo array and in court, was the robber. The prosecution contends that discrepancies in the description that James gave to police (of a man with no facial hair) and the police array (in which Spinale had facial hair) are not significant. They contend Spinale could have been clean shaven at the time of the robbery (which occurred 19 months before the trial) and even if he was not, “what James had really noticed was the defendant’s eyes.”

At trial, two women testified for the defense that they were with the defendant and two friends that night; that no one drank or bought a knife and that after the fireworks, they had pizza and walked to their cars. They both testified they never saw the victim, Kevin James.

The defendant, who acknowledged he was the owner and driver of the Chevy Blazer, testified he never saw the victim that night. The defendant wears a goatee, which he said he has never shaved off in 8 years, and he is five inches taller and 50 pounds heavier than the assailant James had described. The defense had argued that there was a “mixup” among the suspects about height, weight, and facial hair and that the evidence did not support the jury’s guilty verdict. They contend that Suspect #2 more closely matched the description of the robber that James had given police. The defense also argued that James statement “this looks like the kid that held the knife” is not the same as “this is the guy.”

In February 2006, the defendant Michael Spinale, was convicted by a jury of robbery with a deadly weapon after a three-day trial.

Eight months later, the trial court set the verdict aside, and issued an order, which is now the subject of this appeal. The judge said that the identification evidence at trial was insufficient for the jury to have reached a guilty verdict against Spinale. The judge said that despite the victim’s identification of the defendant in court, no rational juror could have found him guilty beyond a reasonable doubt.

The judge set aside the verdict and said the state could retry the defendant.

LEGAL ISSUES PRESENTED

The prosecution says the evidence was sufficient for the jury to do its job, which is to weigh the facts and the evidence, including any inconsistencies, and draw reasonable inferences about guilt and innocence. They contend that the jury judged the credibility of the defendant’s testimony that he always had facial hair, and then had found him guilty.

The prosecution says the judge had to give deference to the jury’s findings. They contend that she made a mistake because she improperly weighed the evidence herself, and judged the credibility of the witnesses herself, which is the jury’s job.

Under New Hampshire law, a judge can set aside a jury verdict if the evidence was insufficient for a rational jury to convict, or if there was some evidence that the jury's decision was based on mistake, partiality or corruption in the jury's conduct so that justice was not done.

The courts have said that if a judge finds the evidence was insufficient, and no rational juror could reach a guilty verdict based on what the prosecutor presented, considering all the evidence and all reasonable inferences that could have been drawn, then the case must be thrown out and the defendant cannot be tried again for the same crime, because that would be ***double jeopardy***. The prosecution says the judge was wrong when she found the evidence was insufficient and they say the case should go back to the trial court for sentencing.

The defense contends that the evidence was insufficient, that it came solely from the victim, Kevin James, and "there is no evidence whatsoever corroborating his story." With the contradictions in the evidence, the defense contends no "rational" jury could find guilt beyond a reasonable doubt.

**This summary was prepared by the Judicial Branch
Communications Office October 1, 2007**